SEP 7
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FILE COPY

No. 311

In the Supreme Court of the United States

OCTOBER TERM, 1929

WALTER A. MAY, HERBERT L. MAY, EDWIN C. MAY, ET AL., EXECUTORS OF THE LAST WILL AND TESTAMENT OF PAULINE MAY, DECEASED, PETITIONERS

v.

D. B. HEINER, COLLECTOR OF INTERNAL REVENUE FOR THE 23RD DISTRICT OF PENNSYLVANIA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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v.

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MEMORANDUM FOR THE RESPONDENT

The respondent does not oppose the petition.

The question presented is whether, under Section 402(c) of the Revenue Act of 1918, there should be included in the gross estate of a decedent for purposes of the estate tax the corpus of a trust which was created by the decedent in 1917, under which the income was payable to decedent's husband during his lifetime and after his death to the decedent during her lifetime, the corpus of the trust being distributable to remaindermen upon her death.

The District Court answered this question in the affirmative in an opinion reported in 25 F. (2d) 1004. (R. 32–38.) Its judgment was affirmed by the Circuit Court of Appeals in an opinion of three lines, reported in 32 F. (2d) 1017. (R. 41.) Thereafter a petition for rehearing, filed after this Court handed down its opinion in *Reinecke* v. *Northern Trust Co.*, 278 U. S. 339, and based upon that opinion, was denied. (R. 45–57.)

The decision of the Circuit Court of Appeals in the instant case, in holding that such a trust should be included in computing decedent's gross estate, is in conflict with that of the First Circuit in *Nichols* v. *Bradley*, 27 F. (2d) 47; and the same question is raised by a number of other cases now pending before the Circuit Courts of Appeals and the Board of Tax Appeals.

Because of these facts and because of the great practical importance of the question and the benefits that would flow from an early determination thereof, we do not oppose the petition for certiorari.

Respectfully submitted.

CHARLES E. HUGHES, Jr.,
Solicitor General.

SEWALL KEY,
Special Assistant to the Attorney General.

SEPTEMBER, 1929.

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